



CrI.A.(MD).No.323 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.A.(MD).No.323 of 2020

1.Murugan

2.Baluchamy

3.Poornammal

... Appellants/Accused No.1 to 3

Vs.

1.The Deputy Superintendent of Police,
Sivagangai Sub Division,
Sivagangai, Sivagangai District.
(Crime No.66 of 2006 Salaikiramam Police Station).

2.The Inspector of Police,
Salaigramam Police Station,
Sivagangai District.
(Cr.No.66/2006)

... Respondents1&2/Complainants

PRAYER : Criminal Appeal has been filed under Section 374(2) of the Criminal Procedure Code, to call for the records from the lower Court in S.C.No.253 of 2009 namely the learned Sessions Judge, Special Court for Exclusive Trial of Cases under SC/ST (POA) Act, 1989, Sivagangai, Sivagangai District relating to the judgment dated 29.09.2020 and allow the appeal by acquitting the appellant.



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For Appellants : M/s.S.Ragaventhri

For Respondents : Mr.M.Sakthi Kumar,
Government Advocate (Crl.Side)

JUDGMENT

The appellants who are Accused Nos.1 to 3 in S.C.No.253 of 2009, on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under SC/ST (POA) Act, 1989, Sivagangai, Sivagangai District have filed this appeal challenging the conviction and sentence imposed against them, in S.C.No.253 of 2009, by judgment dated 29.09.2020, by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under SC/ST (POA) Act, 1989, Sivagangai, Sivagangai District, and acquit the appellants.

2. The Brief facts of the prosecution case reads as follows:

2.1. The appellants 2 & 3 are the parents of the first appellant. On 18.09.2002, the first appellant herein had received a sum of Rs.41,000/- from the defacto complainant and also his relative by giving a false promise



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that he would secure a job abroad. Thereafter, the first appellant neither secured the job nor repaid the amount to the defacto complainant and his relative. On 02.10.2005, at about 10.30 a.m., the defacto complainant and his relative went to the house of the appellants and enquired with the third appellant about the first appellant. At that time, the third appellant abused them in filthy language by using their caste name. Again, the second appellant also abused them in filthy language by using their caste name. At that time, the first appellant, who came downstairs from his room, abused them by saying என்னடா பள்ளப்பயலே. என்னை திருடனை தேடுவது போல் தேடுகிறீர்கள் உன்னிடம் வாங்கிய பணத்தை தர முடியாது. உனக்கு தெரிந்ததை பார்த்துக்கொள். Hence, the defacto complainant sent a complaint to the second respondent through post and also filed a petition before this court to take action against the appellants. Since the first appellant went abroad, no action was taken. After knowing the fact that the first appellant returned to India, the defacto complainant lodged a complaint before the respondent police on 30.06.2006 and the same was registered in Crime No.66 of 2006 for the offence under Section 420 of IPC and Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities), Act, 1989 (hereinafter, for the sake of brevity, referred to as “SC/ST (POA) Act”).



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Thereafter, P.W.11 conducted the investigation and filed the final report. The same was taken on the file in P.R.C.No.03 of 2007 by the learned District Munsif Cum Judicial Magistrate, Ilayangudi.

2.2.On appearance of the appellants, copies of documents relied by the prosecution were furnished to the accused under section 207 of Cr.P.C. The learned District Munsif Cum Judicial Magistrate, Ilayangudi found that the offence under Section 3(1)(x) of SC/ST (POA) Act, is triable only by the Sessions Court and committed the case under Section 209(A) of Cr.P.C., to the learned Sessions Judge, Special Court for Exclusive Trial of Cases under SC/ST (POA) Act, 1989, Sivagangai, Sivagangai Distrit. Thereafter, the case was taken on file in S.C.No.253 of 2009. Then, the Special Court framed necessary charges and questioned the accused. The accused denied the charges and pleaded not guilty and stood trial.

2.3.To prove the case, the prosecution examined P.W.1 to P.W.12 and exhibited 8 documents as Ex.P.1 to Ex.P.8. Thereafter, the appellants were questioned under Section 313 Cr.P.C proceedings after explaining the



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incriminating evidence against them and they denied the same as false and thereafter, the case was posted for defence evidence. The accused neither produced any documents nor examined any witnesses on their side.

2.4. After considering the materials adduced by the prosecution and also hearing the argument of the appellants, the learned trial Judge has passed the impugned order, dated 29.09.2020 and found the appellants guilty and convicted and sentenced them as detailed below and acquitted the first accused from the charge under Section 420 of IPC:-

Accused	Convicted under Section	Sentence of Imprisonment/fine imposed
A1	Section 3(1)(x) of SC/ST (POA), Act, 1989	Rigorous Imprisonment for two years and to pay a fine of Rs.10,000/- (Rupees Ten Thousand Only) in default to undergo Rigorous Imprisonment for six months.
A2 and A3	Section 3(1)(x) of SC/ST (POA), Act, 1989	Rigorous Imprisonment for six months and to pay a fine of Rs.1,000/- (Rupees One Thousand Only) in default to undergo Rigorous Imprisonment for two months.



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3.Challenging the above said conviction and sentence, the appellants have preferred the present Criminal Appeal.

4.1. The learned counsel for the appellants submitted that P.W.1 deposed that there was a money transaction dispute between him and the appellants and because of the said dispute, there was default on the part of the appellants to repay the amount. Therefore, the learned counsel submitted that a false case was registered by making the false allegation in order to give criminal colour to the civil dispute.

4.2. The learned counsel for the appellants further submitted that there was delay in registration of the case. The complaint was registered on 30.06.2006 for the occurrence that took place on 02.10.2005.

4.3. The learned counsel for the appellants further submitted that the ingredients of the offence under Section 3(1)(x) have not been established by the prosecution. Hence, he seeks to allow this appeal by setting aside the conviction and sentence passed by the learned trial Judge.



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5. The learned Government Advocate (Crl.Side) submitted that the occurrence took place on 02.10.2005. Thereafter, the defacto complainant approached the respondent police and the respondent police refused to register the case. Hence, he sent a complaint to the Superintendent of Police, Sivagangai District. Thereafter, the complaint was registered. Mere existence of the civil dispute between the parties relating to the repayment of money is not a ground to disbelieve the evidence of P.W.1 relating to the offence under Section 3(1)(x) of SC/ST Act. Hence, he prayed for dismissal of this appeal.

6. This Court perused the records and the documents adduced by the prosecution and the grounds raised by the appellants and reply made by the learned Additional Public Prosecutor and the impugned judgment.

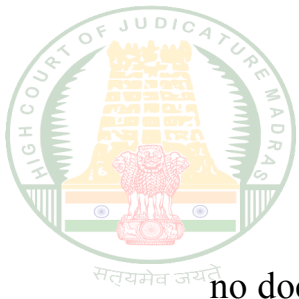
7. The question arising for consideration in this appeal is *whether the conviction and sentence imposed against the appellants under Section 3(1)(x) of SC/ST (POA) Act, 1989, is correct?*



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8. According to P.W.1, the first appellant is son of the appellants 2 & 3. He had received a sum of Rs.41,000/- from him to secure a job abroad. The first appellant neither arranged the job nor repaid the said amount to P.W.1. On 02.10.2005 at about 10.30 am, P.W.1 went to the house of the first appellant and enquired with the third appellant about the first appellant. Without giving proper reply, they abused him in filthy language by using P.W.1's caste name. P.W.1 admitted the dispute relating to the money transaction between him and the appellants both in chief examination and cross examination. There was no evidence adduced to show that the first appellant made a promise to secure the job in foreign country and received the amount. Therefore, the case of the appellants that in order to wreak vengeance, the complainant came up with a false complaint belatedly with false allegation that the appellants scolded him by using his community name is probable. The FIR was registered only on 30.06.2006 for the offence under Section 420 IPC and Section 3(1)(x) of SC/ST(POA) Act, 1989. There was no plausible explanation on the side of P.W.1 for the inordinate delay i.e., nearly 8 months. His only explanation is that he sent a complaint to the second respondent police through post and



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no document was produced before the learned trial Judge to prove the same.

In the said circumstances, delay in preferring the complaint is fatal and hence, this Court without any hesitation holds that P.W.1 made the belated complaint with false allegation and without any evidence to substantiate the said allegation.

9. Apart from that, as rightly argued by the learned counsel for the appellants, the essential ingredients of the public view as defined by the Hon'ble Supreme Court of India has not been established by the prosecution in this case. Public view as held by the Hon'ble Supreme Court of India in various judgments is as follows:-

9.1. *Rabindra Kumar Chhatoi Vs. The State of Odisha & Another in SLP.(Crl.)No.1608 of 2020*

“On a reading of the same, it is evident that the intention to insult or intimidate with an intent to humiliate a member of the Scheduled Castes and the Scheduled Tribe must be “in any place within public view”. There is no doubt that the second respondent herein, is a member of the Scheduled Caste. The question is, whether, the alleged utterances by the appellant



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herein, was in any place within public view. It is noted that when the second respondent sought to repair her house which is adjacent to the appellant's house along with her employees (Labourers) and went into the appellant's house without seeking his prior permission, it was objected to by the appellant herein. The place of occurrence of the alleged offence was at the backyard of the appellant's house. Backyard of a private house cannot be within the public view. The persons who accompanied the second respondent were also the employees or the labour force she had engaged for the purpose of carrying out repairs to her house which is adjacent to the appellant's house. They cannot also be termed as public in general."

9.2. Swaran Singh and Others Vs. State Through Sanding

Counsel and Another reported in 2008 8 SCC 435

"Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view."



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9.3. The above said ratio, laid down by the Hon'ble two Judges Bench of the Hon'ble Supreme Court of India was confirmed by the Hon'ble three Judges Bench of the Hon'ble Supreme Court of India in the case of ***Hitesh Verma Vs. State of Uttarakhand And Another*** reported in (2020) 10 SCC 710. The relevant portion of the above said judgment is as follows:-

“what is to be regarded as “place in Public view” had come up for consideration before this Court in the judgment reported as Swaran Singh V. State. The Court had drawn distinction between the expression “public place” and “in any place within public view”. It was held that if an offence is committed outside the building e.g in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view(sic).”

9.4. The same has been reiterated in the case of ***Priti Agarwally and Others Vs. State of GNCT of Delhi and Others*** reported in 2024 SCC



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OnLine SC 973 and the learned Judge of this Court in Crl.A.234 of 2011

dated 02.08.2024 considered the entire case law has held as follows:-

Para No.33	Para No.30
<i>it is implicitly clear that the expression “within public view” should be construed to mean that the insult or humiliation must take place in the presence of or in the proximity of atleast one independent person</i>	<i>From the above ratio laid down by the Apex Court, it is manifest that it is not the place which has significance in the term “in any place within public view” and what is more material therein is “within public view”, which literally means that in the said place, excluding relatives or friends, there should be presence of other persons, who are independent of the occasion and who could be termed to be public who could witness the happenings in the said place</i>

9.5. In this case, no independent witnesses have been examined to prove the allegation against the appellants that they scolded P.W.1 by calling his caste name in the public view. Further, the above such allegation is without any evidence of corroborative in nature.



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10. In view of the above, the prosecution has failed to prove the case beyond reasonable doubt and hence, the appeal is liable to be allowed.

11. Accordingly, the appeal is allowed in the following terms:

7.1.The judgment passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under SC/ST (POA) Act, 1989, Sivagangai, Sivagangai District, in S.C.No.253 of 2009, dated 29.09.2020, is set aside.

7.2.The appellants are acquitted from all the charges in S.C.No.253 of 2009, dated 29.09.2020, framed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under SC/ST (POA) Act, 1989, Sivagangai, Sivagangai District.

7.3.Fine amount paid by the appellants shall be refunded to the appellants forthwith.

7.4.Bail bond executed by the appellants shall stand cancelled.

12.12.2024

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
dss



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To:

- 1.The learned Sessions Judge, Special Court for Exclusive Trial of Cases
under SC/ST (POA) Act, 1989, Sivagangai, Sivagangai District.
- 2.The Deputy Superintendent of Police,
Sivagangai Sub Division,
Sivagangai, Sivagangai District.
- 3.The Inspector of Police,
Salaigramam Police Station,
Sivagangai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 5.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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